TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 417

REAL SILK HOSIERY MILLS, INC., APPELLANT,

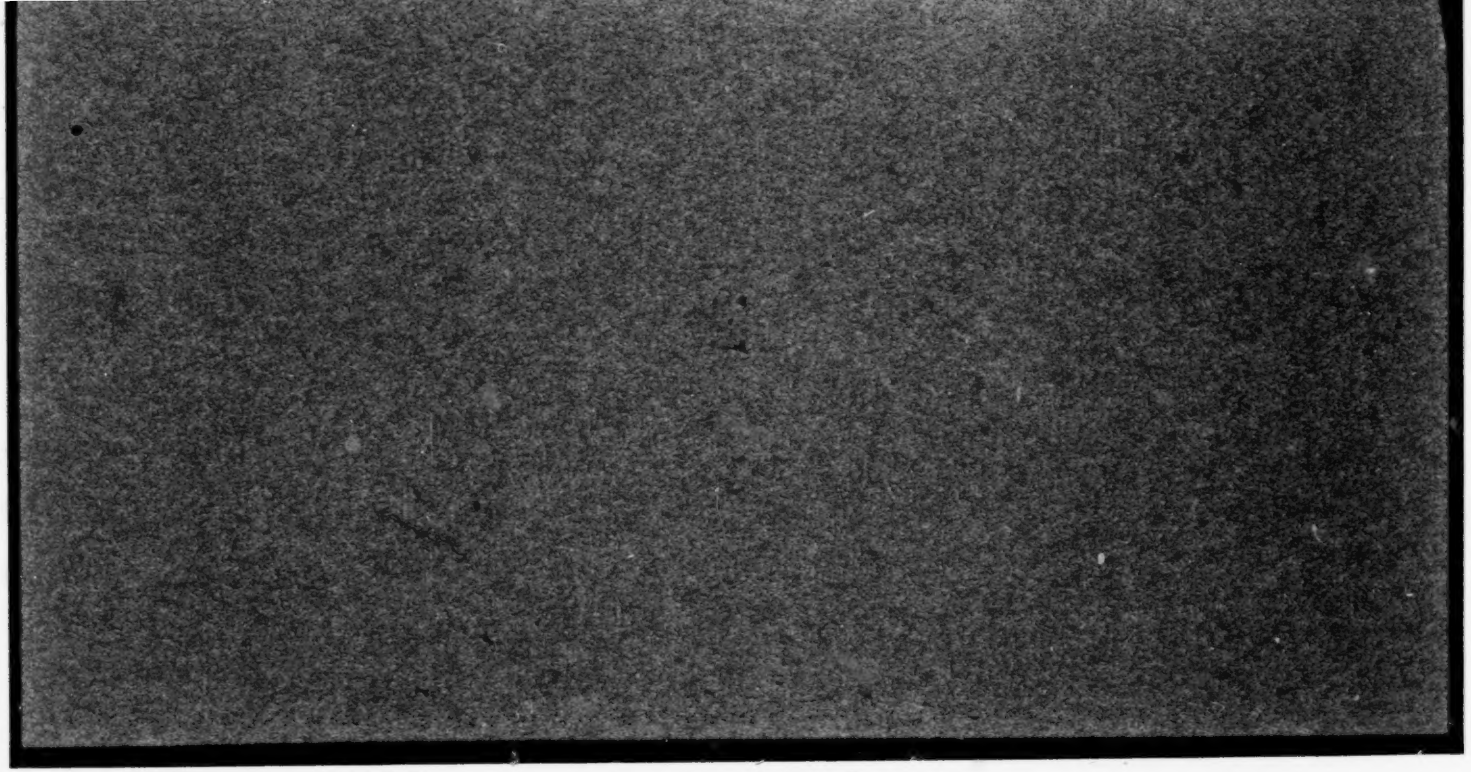
vs.

CITY OF PORTLAND, GEORGE L. BAKER, MAYOR, FRANK S. GRANT, CITY ATTORNEY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED MAY 6, 1939

(28,000)



(30,380)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 15, 1924

[fol. 1] CAPTION—Omitted

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

REAL SILK HOSIERY MILLS, INCORPORATED, Plaintiff and Appellant,

vs.

CITY OF PORTLAND, a Municipal Corporation; GEORGE L. BAKER, Mayor of the City of Portland; Frank S. Grant, City Attorney of the City of Portland; L. V. Jenkins, Chief of Police of the City of Portland, and J. S. Hutchinson, Inspector of Licenses of said City of Portland, Oregon, Defendants and Appellees.

BILL OF COMPLAINT

To the Honorable the Judges of the District Court of the United States for the District of Oregon:

The Real Silk Hosiery Mills, a corporation organized and existing [fol. 2] under the laws of the State of Illinois, brings this its Bill for relief and for its cause of suit states:

I

That plaintiff is a corporation organized under the laws of the State of Illinois and a citizen of the State of Illinois.

That the defendant the City of Portland, Oregon, is and during all of the times herein mentioned has been, a municipal corporation organized and existing under the general laws of the State of Oregon;

That George L. Baker is mayor of the said City of Portland, Oregon;

That Frank S. Grant is city attorney of the said City of Portland, Oregon;

That L. V. Jenkins is chief of police of the said City of Portland, Oregon, and

That J. S. Hutchinson is license inspector of the said City of Portland, Oregon.

That said several officers are charged with the duty of enforcing the City Ordinances of the said City of Portland, Oregon, and all are citizens of the State of Oregon.

II

That this suit is between citizens of different states; that the value of the matter involved in the controversy herein exceeds the sum of $3,000.00, exclusive of interest and costs, as set forth more fully hereinafter.

III

The jurisdiction of this Court is invoked because and by reason [fol. 3] of the federal questions involved in this suit, as more fully set forth hereinafter, and the equity jurisdiction of this Court is sought to avoid a multiplicity of suits and to prevent irreparable loss and injury to the business and property of the plaintiff as hereinafter set forth and because the plaintiff has no adequate remedy at law.

IV

The Real Silk Hosiery Mills, plaintiff herein, for many years before the passage of the ordinance hereinafter mentioned was, and still is, engaged in, and was and is, carrying on the business of selling its goods, wares and merchandise, consisting of silk hosiery, in all of the states of the United States, in the manner hereinafter more specifically set forth, and not otherwise.

IVa

And plaintiff further alleges that the system adopted by plaintiff and under which it carries on its business by having its solicitors accept a small cash payment with all orders which cash payment is to be in full compensation for their servi-es, enables plaintiff to sell to its customers throughout the country at practically factory cost and is for the benefit of the customers and eliminates unnecessary and burdensome cost, expense and commissions between factory and customer. That plaintiff's business carried on under this system has been very successful. That plaintiff has two hundred and forty-five district and local sales managers' offices in the [fol. 4] United States and employs over two thousand representatives soliciting sales of hosiery in practically every city and town of importance throughout the United States, shipping more than two million packages per annum by interstate commerce, and does a business of more than ten million dollars per annum.

V

The plaintiff's principal place of business is at the City of Indianapolis, Indiana, where its goods are manufactured and prepared for shipment; and in other states where plaintiff does business, plaintiff establishes a business office known as District Sales Manager's Office, where orders are received from solicitors and forwarded to the main office of the company at Indianapolis, Indiana.

That plaintiff employs solicitors to go out and solicit orders for its hosiery and when such orders are received they are accompanied by a small cash payment, differing in amount according to the character, quality and quantity of the hosiery order.

That the deposit made by the purchaser is retained by the solicitor as payment for his services in full and is his sole compensation.

✓ Exhibit to Bill of Complaint

5

Date _____

ORDER BLANK

REAL SILK HOSIERY MILLS

MANUFACTURERS

INDIANAPOLIS, INDIANA

MARK ☒ IF REPEAT ORDER ☐

Name _____

PRINT NAME PLAINLY

Street _____

PRINT ADDRESS PLAINLY

City _____ State _____

To be delivered _____

NOTICE TO CUSTOMER:

The hosiery comes packed in boxes as listed below. Colors and sizes may be assorted to the box as desired.

The Mills require a deposit of **$1.00** on each box listed below. Your hosiery will be mailed you by Parcel Post C. O. D., direct from the Post Office branch in our Mills. "PAY THE BALANCE TO THE POSTMAN."

As the entire business of the Real Silk Hosiery Mills is conducted on the Parcel Post C. O. D. Basis, our representative cannot accept your order unless the deposit is paid.

We do not accept full payment in advance. Do not pay more than printed deposit.

MARK X FOR BOXES ORDERED		Price	Deposit Required	Balance C.O.D.
☐	Ladies' Guaranteed Hosiery. Regular Size Box of 4 Pairs	$5.50	$1.00	$4.50
☐	Men's Guaranteed Super-Service Socks Box of 6 Pairs	6.00	1.00	5.00
☐	Ladies' Guaranteed Outsize Box of 3 Pairs	5.50	1.00	4.50
☐	Combination Sample Order 2 Pairs Ladies' Regular and 2 Pairs Men's	5.00	1.00	4.00
☐	Chiffon Hosiery Box of 4 Pairs	6 00	1.00	5.00
☐	Special Combination, 2 Pairs Chiffon and 2 Pairs Ladies' Regular	5.75	1.00	4.75

Chiffon Hosiery is NOT, and cannot be guaranteed as to service on account of the delicate nature of the fabric. Our Ladies' Regular Hosiery carries our absolute guarantee.

Write Below Ladies', Chiffon Men's or Outsize	COLOR	Mark Number Pairs of Each Size								
		8	8½	9	9½	10	10½	11	11½	12

BRANCH OFFICE ADDRESS

REAL SILK HOSIERY MILLS
District Sales Manager's Office
1221-2 Gasco Building
Portland Oregon
Phone Main 5102

Total _____

Deposit Paid _____

Balance C. O. D. _____

Representative's Name _____

Date_____

ORDER BLANK

REAL SILK HOSIERY MILLS

MANUFACTURERS

INDIANAPOLIS, INDIANA

MARK R IF REPEAT ORDER ☐

Name _____
PRINT NAME PLAINLY

Street _____
PRINT ADDRESS PLAINLY

City _____ State_____

To be delivered_____

ONE DOZEN ORDER

NOTICE TO CUSTOMER:

The hosiery comes packed in Boxes as listed below. Colors and sizes may be assorted to the box as desired.

The Mill requires a deposit on each box. Your hosiery will be mailed you by Parcel Post C. O. D. direct from the Post Office branch in our Mills. "PAY THE BALANCE TO THE POSTMAN."

As the entire business of the Real Silk Hosiery Mills is conducted on the Parcel Post C. O. D. Basis, our representative cannot accept your order unless the deposit is paid.

We do not accept full payment in advance. Do not pay more than printed deposit.

MARK X FOR BOXES ORDERED		Price	Deposit Required	Balance C. O. D.
☐	Men's Super-Service Socks 1 Dozen	$12.00	$2.00	$10.00
☐	Ladies' Regular Size 1 Dozen	$16.00	$3.00	$13.00

Write below Ladies' or Men's	COLOR	Mark Number Pairs of Each Size								
		8	8½	9	9½	10	10½	11	11½	12

BRANCH OFFICE ADDRESS

REAL SILK HOSIERY MILLS
District Sales Manager's Office
1221-2 Gasco Building
Portland Oregon
Phone Main 5102

Total_____

Deposit Paid_____

Balance C. O. D. _____

Representative's Name _____

"FROM MILL TO MILLIONS"

Date_____

ORDER BLANK

REAL SILK HOSIERY MILLS

MANUFACTURERS

INDIANAPOLIS, INDIANA

Name _____
PRINT NAME PLAINLY

Street _____
PRINT ADDRESS PLAINLY

City _____ State_____

To be delivered_____

NOTICE TO CUSTOMER:

The hosiery comes packed in Boxes as listed below. Colors and sizes may be assorted to the box as desired.

The Mill requires a deposit of **50c** on each box listed below. Your hosiery will be mailed you by Parcel Post C. O. D. direct from the Post Office branch in our Mills. "PAY THE BALANCE TO THE POSTMAN."

As the entire business of the Real Silk Hosiery Mills is conducted on the Parcel Post C. O. D. Basis, our representative cannot accept your order unless the deposit is paid.

We do not accept full payment in advance. Do not pay more than printed deposit.

MARK X FOR BOXES ORDERED		Price	Deposit Required	Balance C. O. D.
☐	Ladies' Sample Order Box of 2 Pairs for	$3.00	.50	$2.50
☐	Men's Sample Order Box of 3 Pairs for	3.25	.50	2.75
☐	Chiffon Sample Order Box of 2 Pairs Ladies' Chiffon for	3.25	.50	2.75

Chiffon Hosiery is NOT, and cannot be guaranteed as to service on account of the delicate nature of the fabric. Our Ladies' Regular Hosiery carries our absolute guarantee.

Write Below Ladies', Chiffon Men's or Outsize	COLOR	Mark Number Pairs of Each Size								
		8	8½	9	9½	10	10½	11	11½	12

BRANCH OFFICE ADDRESS

REAL SILK HOSIERY MILLS
District Sales Manager's Office
1221-2 Gasco Building
Portland Oregon
Phone Main 5102

Total_____

Deposit Paid_____

Balance C. O. D._____

Representative's Name _____

"FROM MILL TO MILLIONS"

That the orders taken are upon printed blank forms furnished by plaintiff, copies of which are attached hereto:

(Here follows Exhibit to Bill of Complaint, marked side folio pages 5, 6, and 7)

[fol. 8] That upon receiving the order the solicitor returns same to the district sales manager, who in turn forwards it to the home office at Indianapolis. The order is filled in Indianapolis and shipped by Parcel Post C. O. D. direct to the purchaser. In no instance would goods go to the district sales manager's office, or otherwise than as through Parcel Post C. O. D. direct to the purchaser.

That in the City of Portland alone, plaintiff has twenty (20) solicitors operating and has many other solicitors throughout the state.

VI

That on the 21st day of December, 1921, the defendant City of Portland passed an Ordinance No. 40468, entitled an ordinance "on the regulation of private business including license and declaring an emergency," which ordinance was duly approved by the mayor on said 21st day of December, 1921. That said ordinance provides that for a violation of any of the provisions of said ordinance a fine not exceeding $1,500.00 should be imposed, or imprisonment not exceeding six months, or both fine and imprisonment.

That on the 16th day of May, 1923, said City of Portland passed an Ordinance No. 42886 amending said Ordinance No. 40468, which said Ordinance No. 42886 is in words and figures as follows, to wit:

"An Ordinance amending Ordinance No. 40468 by adding thereto [fol. 9] an article to be known as Article XLV½ and amending Section 16 of Article LII of said Ordinance, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. That Ordinance No. 40468 entitled, 'An Ordinance on the regulation of private business, including licenses, and declaring an emergency,' passed by the Council December 21, 1921, be and the same is hereby amended by adding thereto an article to be known as Article XLV½ reading as follows:

Article XLV½

Solicitors

Section 1. Definition. A solicitor within the meaning of this article is defined to be any person who goes from house to house or from place to place in the City of Portland, selling or taking orders for, or offering to sell or take orders for goods, wares or merchandise

or any article for future delivery, or for services to be performed in the future, or for the making, manufacturing or repairing of any article or thing whatsoever for future delivery, provided, however, that this article shall apply only to solicitors who demand, accept or receive payment or deposit of money in avdance of final delivery.

Section 2. License. It shall be unlawful for any person to act as a solicitor within the meaning and application of this article without [fol. 10] first securing a license from the Bureau of Licenses so to do

Section 3. Application.—Bond. Any person desiring a license to engage as a solicitor within the City of Porland, shall make application therefor to the Bureau of Licenses, on forms to be provided, stating the name and address of the applicant, the name and address of the person, firm or corporation which he represents, and the kind of goods offered for sale, or the kind of services to be performed. Such application shall be accompanied by a bond in the penal sum of $500.00 executed by a surety company or by two responsible freeholders residing in the City of Portland (or in lieu thereof a cash bond of equal amount,) conditioned upon the making of final delivery of the goods ordered, or services to be performed, in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such solicitor shall have a right of action on the bond for the recovery of money or damages, or both. Such bond shall remain in full force and effect, and in case of a cash deposit, such deposit shall be retained by the City of Portland, for a period of ninety days after the expiration of any such license, unless sooner released by the Council.

Section 4. Orders. All orders taken by licensed solicitors shall be [fol. 11] in writing in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser.

Section 2. That Section 16 of Article LII of said Ordinance No. 40468 be and the same is hereby amended by adding in proper alphabetical order the following:

Solicitor.—One who demands, receives, or accepts payment or deposit in advance of final delivery:

Those on foot	Quarterly,	$12.50
	Monthly,	5.00
Those using a vehicle	Quarterly,	$25.00
	Monthly,	10.00

Section 3. Inasmuch as this Ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: That a condition now exists whereby in the past frauds have been perpetrated upon the public by certain solicitors, and which condition requires immediate remedy, therefore an emergency is hereby declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council May 16, 1923.
Geo. L. Baker, Mayor of the City of Portland.

Attest: Geo. R. Funk, Auditor of the City of Portland.
Com. Pier."

[fol. 12] That said Ordinance 40468 as amended by Ordinance 42886 is still in force in the City of Portland, Oregon, and unrepealed.

VII

That said Ordinance No. 40468 as amended by said Ordinance No. 42886 in the enactment and provisions thereof undertakes and atempts to, and if it be permitted to be enforced and given effect, will, abridge the privileges and immunities of the plaintiff and will deprive the plaintiff and other citizens of the United States of liberty and property without due process of law and will deny to the plaintiff and other citizens of the United States within the jurisdiction of the City of Portland in the State of Oregon, equal protection of the laws contrary to and in violation of the 14th Amendment to the Constitution of the United States, and more particularly said ordinance and the enactments and provisions thereof requiring the payment of a license tax, procuring a license and giving a bond, and the enactment and provisions concerning the prosecution, conviction and punishment of any person violating said ordinance are contrary to the provisions of said Article XIV and unlawfully interfere with and burden interstate commerce and are in violation of Section 8 of Article I of the Constitution of the United States.

VIII

That said ordinance and the said provisions, enactments and [fol. 13] requirements therein contained, attempts to impose upon merchants who sell their goods by taking orders for future delivery, or whose agents go about from place to place, and from house to house, selling or offering for sale for future delivery, by sample or catalogue at retail, to individual purchasers who pay a small part of the purchase price down, an unreasonable, exorbitant, discriminating and prohibitory license tax, to the detriment of said persons or companies, and to the detriment of the plaintiff in particular, and does not impose the same license tax upon, or require the same bond from other merchants selling the same goods, wares and merchandise, or engaged in the same or similar lines of business, and who sell the same goods at retail, but do not take any part of the purchase price down from the individual purchasers but sell directly and deliver immediately for cash or upon credit, without taking a part of the purchase price down; that he said ordinance and said provisions and enactments requiring a bond to be given, discriminates against the plaintiff and other persons engaged in a similar business, in favor of said other merchants who sell the

same goods from place to place and from house to house by sample or catalogue, but do not take any cash payment.

IX

That said ordinance and its enactments and provisions for a license tax and a bond is an unreasonable, prohibitory and exorbitant discrimination against the plaintiff, and persons or companies, [fol. 14] following the same usual course of business by taking orders for future delivery, by sample or catalogue, from place to place and from house to house at retail, taking a cash payment down, in favor of persons who are usually called "drummers" or traveling salesmen, who take orders for future delivery without a cash payment down, and which class of drummers or traveling salesmen are by the terms of the ordinance in question expressly exempted from the provisions thereof. That there is no reasonable or sound or just cause for discriminating between persons selling to dealers or wholesalers or jobbers, and persons who sell, as plaintiff sells, to ultimate consumers; that the said ordinance is an unlawful and unreasonable attempt to increase the cost of doing business between the producers and ultimate consumers, and thus tends to increase the cost of living and in so doing it discriminates unjustly and makes a classification without reason or equity.

X

That the plaintiff alleges as a matter of fact that it is quite apparent from the reading of the ordinance itself that the said ordinance was passed with the sole intent and purpose of preventing plaintiff, and other persons and firms engaged in a similar line of business, whether selling the same class of goods, wares and merchandise, or selling any other article, where the same is sold by taking orders for future delivery, by samples or catalogue, at retail, from place [fol. 15] to place and from house to house and taking a small cash payment at the time of the order, from engaging in business in the City of Portland, Oregon, and that it is intended to destroy and prevent the plaintiff and such other persons from doing business, and from enjoying and disposing of its property, and exercising the rights of property and of liberty, and of having equal protection of the law to which the plaintiff and all other persons in like situation are entitled, and in which they are protected by the said fourteenth amendment to the Constitution of the United States.

XI

That the value of the matter involved in this controversy is more than $3,000.00, exclusive of interest and costs, from whatever standpoint of view the matter is considered; that the amount of business done by the plaintiff in the City of Portland, Oregon, each year is in excess of $78,000.00, and that the net profits thereon far exceed the sum of $3,000.00, exclusive of interest and costs, and that if

plaintiff is required to pay the license fees required by the said ordinance, that the loss of profits and business will, without question and without doubt, far exceed the sum of $3,000.00 annually, exclusive of interest and costs, and would be a loss far exceeding that sum, both in net profits and in gross business to the plaintiff in any one year, and for many years would be an inestimable amount.

[fol. 16] XII

That the penalties, fines and imprisonments provided in the said ordinance and the bond required, are so onerous, drastic and excessive, as to deter the agents of said plaintiff from continuing in business, as they have heretofore done, and which they did prior to the enactment of the said ordinance and the threats to enforce same by the city officials who are made defendants herein. That irreparable loss and injury will occur to the property and business of the plaintiff, which cannot in any way be estimated and calculated as to the amount, and that if the constitutionality of said ordinance is tested out in a court of law, by waiting for the arrest of one or more of the agents of the plaintiff, that the business of plaintiff will be greatly embarrassed, harassed, and great loss will occur to the plaintiff and individually to its agents.

XIII

And plaintiff further alleges that plaintiff is engaged in interstate commerce between the States of Indiana and Illinois and various other states of the United States, and particularly with the State of Oregon, for the reason that the goods upon leaving plaintiff's factory in Indianapolis, Indiana, are continually in transit until they reach the ultimate consumer in various states in which it does business, and particularly in the City of Portland, Oregon; that orders which [fol. 17] are taken by the agents of the plaintiff in the City of Portland, Oregon, are sent by said agents to the District Sales Manager's office in the City of Portland, Oregon, and from there forwarded directly to the office of plaintiff in Indianapolis, Indiana.

That there is a continuity of transportation of the said goods from the time they leave the factory in the City of Indianapolis, Indiana, until they are delivered to and paid for by the ultimate consumer in the City of Portland, Oregon.

XIV

And plaintiff further alleges that the defendants, each and all of them, have threatened the agents and solicitors of this plaintiff in the City of Portland, Oregon, with arrest unless plaintiff complies with the requirements of said ordinance above set out, and said defendants will, unless restrained by this Honorable Court, cause the arrest, and punishment by fine or imprisonment, or both, of plaintiff's said agents.

XV

As all of said matters and things herein complained of are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of the plaintiff and its agents, and inasmuch as the plaintiff and its agents and others similarly situated, in the City of Portland, State of Oregon, and each of them, have no adequate remedy in the premises by the strict rules of common law, and can [fol. 18] obtain relief only in a court of equity, where matters and things of the kind and character hereinabove stated are properly cognizable and relievable, and to the end that they and each of them have suitable and adequate relief which the plaintiff can obtain only in a court of equity against the enforcement of said illegal ordinance which would deprive plaintiff of its just rights and would take its property and the property of its agents without due process of law and would interfere with interstate commerce, and to the end therefore that the said defendants and each of them may, if they can, show why the plaintiff should not have the relief herein prayed for, and may have full, true, direct and perfect answer made to all and singular the matters herein set forth as if particularly interrogated thereunder, but not under oath, their oaths to such answer or answers, being hereby expressly waived, the plaintiff prays as follows:

(1) That the plaintiff have the relief of a writ of permanent injunction, enjoining and restraining the defendants and each of them and their deputies and other persons acting by or under their authority, and all other persons, from applying and enforcing the said ordinance against the plaintiff or its agents, servants or employees in the City of Portland, State of Oregon, for the reason that the said company is engaged in interstate commerce;

(2) That the plaintiff and its agents, servants and employees may [fol. 19] have such other and further relief in the premises as in equity may pertain and may to the Court seem meet.

(3) That a writ or writs of subpœna may issue to said defendants and each of them, requiring them to appear upon a day or days therein specified, and answer this Bill of Complaint fully and truthfully but not on oath, oath being hereby expressly waived, and they, and each of them be required to abide by and perform what the Court shall deem fit in the premises.

Dolph, Mallory, Simon & Gearin, Edgar Freed, Attorneys and Solicitors for Plaintiff and Appellant.

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS BILL OF COMPLAINT—Filed Oct. 27, 1923

Come now the defendants above named by Frank S. Grant and R. A. Imlay, their attorneys, and move the Court for an order dis-

missing the Bill of Complaint herein and this suit upon the following grounds:

1. That it appears upon the face of the complaint herein that the plaintiff is not entitled to the relief prayed for, nor to any relief.

2. That it appears upon the face of the complaint that the passage of said ordinance is within the scope of lawful power by the City of [fol. 20] Portland and the Council of said city and that said ordinance is a valid exercise of such power.

Frank S. Grant, R. A. Imlay, Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

DECREE DISMISSING BILL OF COMPLAINT

On the 3rd day of December, 1923, the Court after hearing argument sustained defendants' said motion to dismiss and allowed plaintiff further time within which if it so desired to amend its complaint.

On December 24, 1923, plaintiff, by its attorneys, having announced in open Court that it did not desire to amend its complaint the Court entered its decree dismissing plaintiff's complaint and awarding the defendants judgment and decree against plaintiff for costs, which judgment and decree is as follows:

This cause at this time coming on for further hearing on motion of the defendants, for the entering of a decree herein, the plaintiff being represented by John M. Gearin, its attorney, and the defendants being represented by R. A. Imlay, deputy city attorney, and the Court having heretofore sustained defendants' motion to dismiss the complaint, and the plaintiff having declined to further plead and having elected to stand upon is complaint,

It is now therefore ordered, adjudged and decreed that the complaint of the plaintiff herein be and the same is hereby dismissed [fol. 21] and held for naught, and that the defendants have judgment against the plaintiff for their costs and disbursements incurred herein taxed and allowed at $—.

Dated this 24th day of December, 1923.

R. S. Bean, Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed Dec. 26, 1923

The Real Silk Hosiery Mills, Inc., plaintiff and appellant in the above-entitled cause, conceiving itself aggrieved by the judgment and decree made and entered by the above-entitled Court in the above-

entitled cause on the 24th day of December, 1923, which Judgment [fol. 22] and Decree is as follows (omitting title of court and cause):

"This cause at this time coming on for further hearing on motion of the defendants, for the entering of a decree herein, the plaintiff being represented by John M. Gearin, its attorney, and the defendants being represented by R. A. Imlay, deputy city attorney, and the Court having heretofore sustained defendants' motion to dismiss the complaint, and the plaintiff having declined to further plead and having elected to stand upon its complaint,

It is now, therefore, ordered, adjudged and decreed that the complaint of the plaintiff herein be and the same is hereby dismissed and held for naught, and that the defendants have judgment against the plaintiff for their costs and disbursements incurred herein taxed and allowed at $—.

Dated this 24th day of December, 1923.

R. S. Bean, Judge."

does hereby appeal from the said judgment and decree, and from the whole and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and the said Real Silk Hosiery Mills, Inc. files herewith its assignments of errors asserted and intended to be urged upon this its said appeal and the said Real Silk Hosiery Mills, Inc., plaintiff and appellant, prays that this [fol. 23] its petition for said appeal, and that its said appeal, may be allowed and that citation issue herein as provided by law, and that a transcript of the record, proceedings and papers upon which said judgment and decree was made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and also, that an order be made fixing the amount of security which the said plaintiff and appellant shall give and furnish upon this its said appeal, and your petitioner will ever pray.

Dolph, Mallory, Simon & Gearin, Edgar Freed, Solicitors and Attorneys for Plaintiff and Appellant, Real Silk Hosiery Mills, Inc.

The foregoing Petition for allowance of appeal is granted and the said appeal is allowed as prayed, upon giving of a bond in the sum of Five Hundred Dollars ($500.00) to be approved by this Court.

Dated this 26th day of December, 1923.

R. S. Bean, Judge of said District Court.

[fol. 24] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Dec. 26, 1923

The plaintiff and appellant complains of errors in the proceedings in this cause in the District Court of the United States for the

District of Oregon, and in the decision, judgment and decree rendered, made and entered therein on the 24th day of December, A. D. 1923, and assigns the following as the errors complained of:

1. The Court erred in sustaining the motion of the defendants to dismiss the plaintiff's complaint.

2. The Court erred in not overruling the motion to dismiss plaintiff's complaint.

3. The Court erred in holding and deciding that the ordinance pleaded in plaintiff's complaint, being Ordinance No. 42886, amending Ordinance No. 40468, was a valid ordinance and that said City of Portland had power and authority to enact said ordinance and enforce it.

4. The Court erred in not holding that said Ordinance No. 42886, amending Ordinance No. 40468, was invalid.

5. The Court erred in not holding and decreeing that the business carried on by the plaintiff as set out in plaintiff's complaint constituted interstate commerce and that said Ordinance No. 42886, amending Ordinance No. 40468, was an attempt to regulate interstate commerce and impose unreasonable burdens thereon and deprive plaintiff of its property without due process of law and was [fol. 25] therefore void.

6. The Court erred in not holding that said Ordinance No. 42886, amending Ordinance No. 40468, was an attempt to deny to plaintiff the equal protection of the laws of the United States and was in violation of the XIV Amendment to the Constitution of the United States, and is in violation of Section 8, Article I of the Constitution of the United States.

7. The Court erred in not holding that said Ordinance No. 42886, amending Ordinance No. 40468, was an unlawful attempt to discriminate between plaintiff and other merchants who take orders for goods without taking a cash deposit, and in not holding that said ordinance requiring a license tax and bond from plaintiff and others doing business in a similar manner as plaintiff, is an unreasonable, prohibitory and exorbitant discrimination against the plaintiff and others doing business in a similar manner and in favor of persons usually called drummers, who take orders for future delivery without taking a cash deposit.

8. The Court erred in not entering a decree as prayed for in plaintiff's complaint and in not perpetually enjoining defendants from enforcing said Ordinance No. 42886, amending Ordinance No. 40468.

Dolph, Mallory, Simon & Gearin, Edgar Freed, Attorneys and Solicitors for Plaintiff and Appellant.

[fol. 26] CITATION—In usual form, filed Dec. 26, 1923; omitted in printing

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[fol. 27] BOND ON APPEAL FOR $500.00—Approved and filed Dec. 26, 1923; omitted in printing

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[fol. 28] IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated by and between the plaintiff and appellant and defendants and appellees that the Clerk of the United States District Court for the District of Oregon may certify the Record on Appeal without comparing copies with the original.

Dolph, Mallory, Simon & Gearin, Edgar Freed, Solicitors and Attorneys for Plaintiff and Appellant. Frank S. Grant, R. A. Imlay, Solicitors and Attorneys for Defendants and Appellee.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed pages, numbered from 1 to 28 inclusive, are a full, true, correct and complete transcript of the record, papers, and other proceedings in the above entitled suit as are required and necessary for the hearing in the United States Circuit Court of Appeals, for the [fol. 30] Ninth Circuit, on the appeal taken by the plaintiff on December 26, 1923, from the judgment and decree entered in said District Court of the United States for the District of Oregon, on the 24th day of December, 1923, in case numbered E-8667 in equity, as the originals thereof appear of record and on file in said District Court at the City of Portland, in said District; and that the same constitute the transcript of record on appeal herein from said decree of the District Court of the United States for the District of Oregon, entered on December 24, 1923, to the United States Circuit Court of Appeals for the Ninth Circuit.

And I further certify that pursuant to the stipulation of the parties appearing in the foregoing record, I have executed this certificate without comparing the record thus certified with the original.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, at Portland, Oregon, this 27th day of December, A. D. 1923.

G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon. (Seal U. S. District Court.)

[fol. 31] CAPTION—Omitted

[fol. 32] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 4176

REAL SILK HOSIERY MILLS, INC., Appellant,

vs.

CITY OF PORTLAND, a Municipal Corporation, et al., Appellees

SUBMISSION OF CAUSE

Ordered appeal in the above entitled cause argued by Mr. John M. Gearin, counsel for the appellant, and by Messrs. Frank S. Grant and R. A. Imlay, counsel for the appellees, and submitted to the court for consideration and decision.

[fol. 33] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER TO FILE OPINIONS, JUDGMENTS AND DECREES

By direction of the Honorable William H. Hunt, William W. Morrow, and Frank H. Rudkin, Circuit Judges, before whom the causes were heard, ordered that the typewritten opinion this day rendered by this court in each of the following entitled causes be forthwith filed by the Clerk, and that a Judgment or Decree be filed and recorded in the Minutes of this Court in each of the said causes in accordance with the opinion filed therein: * * *

[fol. 34] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

[fol. 35] OPINION—Filed April 21, 1924

MORROW, C. J.:

Plaintiff brought suit in the lower court to enjoin defendant from enforcing, as against the plaintiff's solicitors, Ordinance No. 40468 of the City of Portland, as amended by Ordinance No. 42886, defining solicitors and requiring them to obtain a license and give a bond. Decree dismissing plaintiff's bill of complaint. Plaintiff appeals to this court.

It appears from the bill of complaint that Ordinance No. 40468 passed by the City Council on December 21, 1921, is the general license ordinance of the City of Portland, relating to the regulation and licensing of numerous businesses and occupations.

Ordinance No. 42886, passed on May 16, 1923, is an amendment added to Ordinance No. 40468. The amendment is known as Article XLV½.

In Section One a solicitor is defined as "any person who goes from house to house or from place to place in the City of Portland, selling or taking orders for, or offering to sell or take orders for goods, wares or merchandise or any article for future delivery, or for serv-[fol. 36] ices to be performed in the future, or for the making, manufacturing or repairing of any article or thing whatsoever for future delivery, provided, however, that this article shall apply only to solicitors who demand, accept or receive payment or deposit of money in advance of final delivery."

In Section Two it is provided that:

"It shall be unlawful for any person to act as a solicitor within the meaning and application of this article without first securing a license from the Bureau of Licenses so to do."

In Section Three is is provided:

"Any person desiring a license to engage as a solicitor within the City of Portland, shall make application therefor to the Bureau of Licenses, on forms to be provided, stating the name and address of the applicant, the name and address of the person, firm or corporation which he represents, and the kind of goods offered for sale, or the kind of services to be performed. Such application shall be accompanied by a bond in the penal sum of $500.00 executed by a surety company or by two responsible freeholders residing in the City of Portland (or in lieu thereof a cash bond of equal amount), conditioned upon the making of final delivery of the goods ordered, or services to be performed, in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such

[fol. 37] solicitor shall have a right of action on the bond for the recovery of money or damages, or both."

Ordinance No. 40468 was further amended so as to provide a license tax for a "Solicitor" defined as "One who demands, receives, or accepts payment or deposit in advance of final delivery;"

For "Those on foot.....	Quarterly.....	$12.50
	Monthly	5.00
Those using a vehicle.....	Quarterly.....	$25.00
	Monthly	10.00"

It was further provided that:

"Inasmuch as this Ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: That a condition now exists whereby in the past frauds have been prepetrated upon the public by certain solicitors, and which condition requires immediate remedy, therefore an emergency is hereby declared to exist and this ordinance shall be in force and effect from and after its passage by the Council."

Plaintiff alleges in its complaint that it is a corporation organized and existing under the laws of the State of Illinois, and a citizen of the State of Illinois;

That its principal place of business is at the City of Indianapolis, Indiana, where its goods are manufactured and prepared for shipment; in states where plaintiff does business, it establishes a busi-[fol. 38] ness office known as District Sales Manager's Office, where orders are received from solicitors and forwarded to the main office of the company at Indianapolis, Indiana;

That plaintiff employes solicitors to go out and solicit orders for its hosiery and when such orders are received they are accompanied by a small cash payment, differing in amount according to the character, quality and quantity of the hosiery order;

That the deposit made by the purchaser is retained by the solicitor as payment for his services in full and is his sole compensation;

That the system adopted by plaintiff and under which it carries on its business by having its solicitors accept a small cash payment with all orders, which cash payment is to be in full compensation for their services, enables plaintiff to sell to its customers throughout the country at practically factory cost, and is for the benefit of the customers, and eliminates unnecessary and burdensome cost, expense and commissions between factory and customer;

That upon receiving an order, the solicitor returns the same to the district sales manager, who in turn forwards it to the home office at Indianapolis. The order is filled in Indianapolis and shipped by parcel post C. O. D. direct to the purchaser. In no instance do goods go to the district sales manager's office, or otherwise than through parcel post C. O. D. direct to the purchaser.

[fol. 39] Plaintiff alleges that the enforcement of this Ordinance will

(1) abridge the privileges and immunities of the plaintiff;

(2) deprive plaintiff of liberty and property without due process of law;

(3) deny to plaintiff the equal protection of the laws;

(4) unlawfully interfere with and burden interstate commerce; and

(5) that the license tax it imposes is unreasonable, exorbitant, discriminating, and prohibitory.

The privileges and immunities claimed by plaintiff pertain to its business of shipping its manufactured product in interstate commerce from Indianapolis, Indiana, to purchasers at various points in the United States, particularly in this case to purchasers in Portland, Oregon, where its solicitors encounter the Ordinance under consideration, imposing a license tax on solicitors and requiring them to give a bond conditioned for the making of final delivery of the goods ordered in accordance with the form of such order, or failing therein, that the advance payment on such order be refunded.

Defendants concede that the City of Portland has no power to directly regulate, prohibit, or burden interstate commerce or rights flowing proximately therefrom; but it contends that the city may [fol. 40] enact an ordinance, under its reserve police power, which will be valid although it may indirectly affect interstate commerce, and that the ordinance in question is such an ordinance.

What limitation there is to the local police power when challenged as encountering the higher guaranties of the Federal Constitution has been a subject of much discussion, and the cases involving the question are numerous.

In Barbier v. Connolly, 113 U. S. 27, 31, Mr. Justice Field, speaking for the Supreme Court of the United States, said:

"But neither the amendment—" (the Fourteenth Amendment) "broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

In Sligh v. Kirkwood, 237 U. S. 52, 58, the Supreme Court said:

"The limitations upon the police power are hard to define, and its far-reaching scope has been recognized in many decisions of this court. At an early day it was held to embrace every law or statute which concerns the whole or any part of the people, whether it related to their rights or duties, whether it respected them as men or [fol. 41] citizens of the state, whether in their public or private relations, whether it related to the rights of persons or property of the public or any individual within the state. New York v. Miln, 11 Pet. 102, 139. The police power, in its broadest sense, includes all legislation and almost every function of civil government. Barbier

v. Connelly, 113 U. S. 27. It is not subject to definite limitations, but is coextensive with the necessities of the case and the safeguards of public interest. Camfield v. United States, 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health. Chicago, etc., Railway v. Drainage Commissioners, 200 U. S. 561, 592. In one of the latest utterances of this court upon the subject, it was said: 'Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. * * * And further, 'It is the most essential of powers, at times the most insistent and always one of the least [fol. 42] limitable of the powers of government.' Eubank v. Richmond, 226 U. S. 137, 142."

The purpose of the Ordinance under consideration, as alleged in the complaint, is to license and regulate the business of solicitors who go from house to house, or from place to place in the City of Portland, selling or taking orders for the sale of goods, wares, and merchandise for future delivery. The Ordinance has this limitation: that it "shall apply only to solicitors who demand, accept or receive payment or deposit of money in advance of final delivery."

Under the system adopted by plaintiff for carrying on its business, the solicitor, upon receiving such an order from the purchaser, does not send it directly to the Home Office in Indianapolis, but turns it in to the District Sales Manager in Portland, who in turn forwards it to the main office in Indianapolis where the order is filled and shipped by parcel post C. O. D. direct to the purchaser. In no instance do the goods go to the District Sales Manager's office, or otherwise than as through parcel post C. O. D. direct to the purchaser. The deposit or advance payment made by the purchaser for the goods is retained by the solicitor as payment for his services in full and is his sole compensation.

Plaintiff is not a solicitor, but a producer and a shipper. It does [fol. 43] not go from house to house, and from place to place, taking orders for the sale of goods for future delivery. It is true that the plaintiff alleges that it employs solicitors to go out and solicit orders for its hosiery, and when such orders are received, they are accompanied by a small cash payment advanced by the purchaser, differing in amount according to the character, quality, and quantity of the hosiery ordered. But it is further alleged that the deposit made by the purchaser is retained by the solicitor as payment for his services in full, and is his sole compensation. In other words, each sale is a separate and distinct service, for which the solicitor is paid in full by the purchaser, and is the solicitor's sole compensation for that service. He receives nothing from the plaintiff and has no interest in the unpaid balance, and on the other hand the plaintiff has no interest in the advance payment made by the purchaser to the solici-

tor. Its interest is in the prospective profits in shipping goods for the unpaid balance, to be collected not by the solicitor, but by parcel post upon the shipment direct to the purchaser C. O. D.

Between the solicitor and this unpaid balance due the plaintiff upon delivery of the goods ordered is the district sales manager, whose relation to the plaintiff is not disclosed, but presumably he is plaintiff's agent in the particular locality. It follows that the [fol. 44] solicitor's connection with the particular transaction terminates when he has turned in the purchaser's order to the district sales manager. The district sales manager forwards the order to the plaintiff, but no license tax or bond is required for that business or for the subsequent shipment. That shipment and the business of plaintiff to which it relates is left entirely free from taxes or other regulation by the State and by the City of Portland.

Can it be said, upon this state of facts, that the plaintiff's business in interstate commerce is subject to a burden because its independent solicitor, doing business in the City of Portland, as a solicitor, is required to pay a license tax and give a bond conditioned with respect to the faithful discharge of his obligations in carrying on that business?

In Pennsylvania Railroad Co. v. Knight, 192 U. S. 21, 27-28, a much more intimate and continuous relation between state and interstate business was held by the supreme Court separable for the purpose of local jurisdiction and regulation. In that case a cab service was maintained by the Pennsylvania Railroad Co. to take passengers to and from its terminal in the City of New York. The State of New York imposed a franchise, or license tax, upon the [fol. 45] Railroad Company for operating this cab service. The contention of the Railroad Co. was that this cab service was merely an extension of its interstate transportation, furnishing the service to those who were about to take over its lines some interstate transportation, thus commencing at the home or hotel of the passenger in New York, instead of from the ferry landing, or like service to those who had already received such interstate transportation, thus completing the transportation to their places of destination. The Supreme Court held that this cab service was rendered wholly within the State of New York, and had no contractual or necessary relation to interstate transportation. It was either preliminary or subsequent thereto. It was independently contracted for, and not necessarily connected therewith; that when service is wholly within a state, it is presumably subject to state control. The burden is on him who asserts that though actually within, it is legally outside the state, and unless the interstate character is established, locality determines the question of jurisdiction.

The court refers to Coe v. Errol, 116 U. S. 517, as a case closely in point, where spruce logs had been drawn down from a place in New Hampshire and placed in a stream, also in New Hampshire, to be floated thence down the Androscoggin River to the State of Maine, there to be manufactured and sold. After they had been [fol. 46] thus drawn down and placed in the New Hampshire stream, a tax was imposed on them by the State of New Hampshire.

The validity of that tax was challenged, on the ground that the logs were in the course of transportation from New Hampshire to the State of Maine. The local tax in New Hampshire was sustained by the Supreme Court of New Hampshire, and also by the Supreme Court of the United States, on the ground that the logs had not commenced to move in interstate commerce.

The Supreme Court, after referring to this case, said, further:

"* * * many things have more or less relation to interstate commerce, which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce? And where wil- the limit be placed?"

The court was of opinion that the cab service was an independent local service, preliminary or subsequent to any interstate transportation, and therefore subject to the state tax.

In the recent case of Hall v. Geiger-Jones Co., 242 U. S. 539, the [fol. 47] so-called "Blue Sky Law" of Ohio was involved in its state and interstate regulations, providing a license tax and certain prohibitions to prevent fraud in the sales of bonds and other securities. Geiger-Jones Co. and others were engaged in the business of buying and selling in Ohio investment securities of corporations of Ohio and other states, and foreign countries. The parties affected by the law objected to the statute on various grounds, among others that it conferred arbitrary power upon an officer, called a Commissioner, to grant or refuse a license; that it deprived the parties of their property without due process of law, denied them the equal protection of the law, and imposed burdens on interstate commerce. The court, commenting upon the objection that the law was a burden on interstate commerce, said:

"The provisions of the law, it will be observed, apply to dispositions of securities within the State and while information of those issued in other States and foreign countries is required to be filed (No. 6373-9), they are only affected by the requirement of a license of one who deals in them within the State. Upon their transportation into the State there is no impediment—no regulation of them or interference with them after they get there. There is the exaction only that he who disposes of them there shall be licensed to do so and this only that they may not appear in false character and impose [fol. 48] an appearance of a value which they may not possess—and this certainly is only an indirect burden upon them as objects of interstate commerce, if they may be regarded as such. It is a police regulation strictly, not affecting them until there is an attempt to make disposition of them within the State. To give them more immunity than this is to give them more immunity than more tangible articles are given, they having no exemption from

regulations the purpose of which is to prevent fraud or deception. Such regulations affect interstate commerce in them only incidentally." (Citing cases.)

"We might, indeed, ask, When do the designated securities cease migration in interstate commerce and settle to the jurisdiction of the State? Material things, choses in possession, pass out of interstate commerce when they emerge from the original package. Do choses in action have a longer immunity? It is to be remembered that though they may differ in manner of transfer, they are in the same form in the hands of the purchaser as they are in the hands of the seller, and in the hands of both as they are brought into the State. We ask again, Do they never pass out of interstate commerce? Have they always the freedom of the State? Is there no point of time at which the State can expose the evil that they may mask? Is anything more necessary for the supremacy of the national power than that they be kept free when in actual trans- [fol. 49] portation, subjected to the jurisdiction of the State only when they are attempted to be sold to the individual purchaser? The questions are pertinent, the answer to them one way or the other, of consequence; but we may pass them, for regarding the securities as still an interstate commerce after their transportation to the State is ended and they have reached the hands of dealers in them, their interstate character is only incidentally affected by the statute."

The statute was accordingly upheld.

In Plumley v. Massachusetts, 155 U. S. 461, substantially the same question was dealt with by the Supreme Court as in the last case. The statute of Massachusetts prohibited the manufacture and sale of any article, product, or compound made in imitation of yellow butter produced from pure unadulterated milk or cream. It was provided, however, that the act should not be construed as prohibiting the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as would advise the consumer of its real character, free from coloration or ingredient that caused it to look like butter. The purpose of the statute was to prevent fraud in the sale of an article of merchandise. It was objected that it was repugnant to the Constitution of the United States in all the provisions urged upon the court in the present case, including the provision giving Congress power to regulate commerce among the states. The court [fol. 50] upheld the Massachusetts statute on the ground that the provisions of the Constitution of the United States did not compel the court to adjudge that the states had surrendered to the general Government the power to prevent fraud in the sales of property, and that the Constitution did not secure to anyone the privilege of defrauding the public.

These cases and others that might be cited make it sufficiently plain that the freedom of interstate commerce has been judicially limited in its supposed conflict with the police power of the state to such burdens as pertain directly to the movement of commerce among the several states, and not to regulations governing local business

within the state, preliminary or subsequent thereto, and does not prohibit the state by general law or local ordinance from legislating for the general welfare of the public within the state, or provide proper regulations for safeguarding the public interests or for the protection of the public against fraud and deception notwithstanding such legislation or regulation may indirectly affect interstate commerce.

In the present case the Ordinance declared that a condition existed in the City of Portland whereby frauds had been perpetrated upon the public by certain solicitors; that the condition required immediate remedy, and an emergency was declared to exist, so that the [fol. 51] Ordinance should be in force and effect from and after its passage.

There is a presumption that the declarations of the Ordinance are true, and when the contrary is not made to appear, they are so accepted by the court. Hendrick v. State of Maryland, 235 U. S. 610; Camas Stage Co., Inc., v. Kozer, 104 Oregon 600, 606. The bill of complaint in this case is unverified and is unsupported by affidavit. It is obvious that the frauds referred to were easily perpetrated by the solicitor in receiving orders from the purchaser with an advance payment, which was his full compensation, and he had but the feeble restraint of continued employment to compel him to turn in the order to the District Sales Manager. This was a great temptation, in many cases, since what he appropriated was his own, and his failure to turn in the order was not more serious than a personal neglect or omission.

The purchaser, on the other hand, had no security that the solicitor would do his duty, and was in danger of losing the advance payment unless the solicitor's business was regulated in some such way as is provided in this Ordinance. We are justified by the express terms of the Ordinance, in the absence of affidavits to the contrary, in concluding that this was the actual situation in the City of Portland when the Ordinance was adopted.

Plaintiff contends, in argument, that if this license tax is required to be paid, it will be paid by the plaintiff and will be added to the [fol. 52] price of the merchandise which the ultimate purchaser will have to pay. But the liability for this tax need not be incurred by either the solicitor or the plaintiff. They may carry on this business in Portland without a license or a bond of the plaintiff will compensate the solicitor directly, instead of indirectly, by requiring an advance payment from the purchaser. The plaintiff can sell its goods by soliciting, and collect the full amount due when delivered to the purchaser C. O. D., and then remit to the solicitor the amount due him. The Ordinance in no way interferes with such a business arrangement. But if plaintiff's present system is to be continued, what are the remedies for the prevention of fraud and deception by the solicitor? It is for the City to proceed in the usual way and impose a license tax upon the solicitor to identify him in his business and secure a fund that would reimburse the City for the supervision of such business, and require a bond, conditioned upon the making of a final delivery of the goods ordered in accordance with

the terms of the order; or, failing in this, that the advance payment on such order would be refunded to the purchaser. The license tax and bond, under these circumstances, was a reasonable and just regulation, and the amount of the tax is not shown to be unreasonable.

The purpose of the Ordinance, then, appears plain and simple and within the authority of the City of Portland to enact under its [fol. 53] police power. There may have been business rivalry, but we cannot assume, without convincing evidence, that it was all there was in the ordinance. In this aspect, it was not a violation of any of the restrictions placed upon the State relating to the free movement of property in interstate commerce. It was rather in aid of such commerce. It also appears that the business of the solicitor, while independent and self-sustaining, was only preliminary to the final and ultimate business of the plaintiff in sending forward the merchandise in interstate commerce, and for this reason is unobjectionable, as was held in Pennsylvania v. Knight, supra.

We find nothing in the objection to the Ordinance that it is not based upon a reasonable classification. The regulation applies only to solicitors engaged in soliciting orders for goods, wares, and merchandise who demand, accept, or receive payment, or take such money in advance of final delivery. This is a reasonable classification. Barbier v. Connolly, 113 U. S. 27; Flint v. Stone Tract Co., 220 U. S. 107; Tanner v. Little, 240 U. S. 369, 382; Northwest Auto Co. v. Hurlburt, 104 Oregon 398, 411.

We are of opinion that the Ordinance is within the police power of the City, and is, therefore, valid.

[fol. 54] The decree of the District Court, dismissing the bill of complaint, is therefore affirmed.

[File endorsement omitted.]

[fol. 55] In United States Circuit Court of Appeals

[Title omitted]

Appeal from the District Court of the United States for the District of Oregon

Decree—Filed April 21, 1924

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Oregon and was duly submitted:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellees and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellees recover against the appellant for their costs herein expended, and have execution therefor.

[File endorsement omitted.]

[fol. 56] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR APPEAL—Filed May 3, 1924

The above mentioned Appellant, Real Silk Hosiery Mills, Incorporated, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit, and that a judgment has therein been rendered on the 21st day of April, 1924, affirming the decree of the District Court of the United States for the District of Oregon, and that the matter in controversy in said suit exceeds one thousand dollars besides costs; that this cause is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore the said Appellant prays that an appeal as allowed it in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said Appellant, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

Dolph, Mallory, Simon & Gearin, John M. Gearin, Edgar Freed, Bamberger & Fiebleman, Solicitors and Attorneys for Appellant.

[fol. 57] [File endorsement omitted.]

[fol. 58] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 3, 1924

It is hereby ordered that the Appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed, and that bond be given in the sum of $250.00.

Wm. W. Morrow, United Sates Circuit Judge, Ninth Circuit.

Dated: San Francisco, California, May 3, 1924.

[File endorsement omitted.]

[fol. 59] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 3, 1924

The Appellant in the above entitled cause, in connection with its Petition for appeal herein, presents and files therewith its assignment of errors, as to which matters and things it says that the decree entered herein on the 21st day of April, A. D. 1924, is erroneous, to wit:

First. The Court erred in affirming the judgment and decree appealed from of the District Court of the United States for the District of Oregon dismissing Appellant's Complaint, and in not reversing the said judgment and decree.

Second. The Court erred in holding and decreeing that the Ordinance complained of, being Ordinance No. 42886, amending Ordinance No. 40468, of the City of Portland, Oregon, is within the police powers of said City of Portland.

Third. The Court erred in holding and deciding that the Ordinance pleaded in Plaintiff's Complaint, being Ordinance No. 42886, amending Ordinance No. 40468, is a valid Ordinance and that said City of Portland had power and authority to enact said Ordinance and enforce it.

Fourth. The Court erred in not holding that said Ordinance No. 42886, amending Ordinance No. 40468, is invalid.

Fifth. The Court erred in not holding and decreeing that the [fol. 60] business carried on by the Plaintiff as set out in Plaintiff's Complaint, constituted interstate commerce and that said Ordinance No. 42886, amending Ordinance No. 49468, is an attempt to regulate interstate commerce and impose unreasonable burdens thereon and deprive Plaintiff of its property without due process of law and is therefore void.

Sixth. The Court erred in not holding that said Ordinance No. 42886, amending Ordinance No. 40468, is an attempt to deny to Plaintiff the equal protection of the laws of the United States and is in violation of the XIV Amendment to the Constitution of the United States, and is in violation of Section 8, Article I of the Constitution of the United States.

Seventh. The Court erred in not holding that said Ordinance No. 42886, amending Ordinance No. 49468, is an unlawful attempt to discriminate between Plaintiff and other merchants who take orders for good- without taking a cash deposit, and in not holding that said Ordinance requiring a license tax and bond from Plaintiff and others doing business in a similar manner as Plaintiff, is an unreasonable, prohibitory and exorbitant discrimination against the Plaintiff and

others doing business in a similar manner and in favor of persons usually called drummers, who take orders for future delivery without taking a cash deposit.

Eighth. The Court erred in not entering a decree as prayed for in Plaintiff's Complaint, and in not perpetually enjoining Defendants from enforcing said Ordinance No. 42886, amending Ordinance No. 40468.

Wherefore Appellant prays that said judgment and decree of said Circuit Court of Appeals may be reversed in all things.

John M. Gearin, Edgar Freed, Dolph, Mallory, Simon & Gearin, Bamberger & Feibleman, Solicitors and Attorneys for Appellant.

[File endorsement omitted.]

[fols. 61 & 62] Bond on Appeal for $250.00—Approved and filed May 12, 1924; omitted in printing

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[fol. 63] In United States Circuit Court of Appeals

[Title omitted]

Clerk's Certificate

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-two (62) pages, numbered from and including 1 to and including 62, to be a full, true and correct copy of the record under Rule 8 of the Supreme Court of the United States, in the above-entitled cause, including the Assignment of Errors on Appeal to the Supreme Court of the United States and of all proceedings had, and of all papers, including the Opinion filed in the said Circuit Court of Appeals in the above-entitled case, made pursuant to request of counsel for the appellant, as the originals thereof remain on file and appear of record in my office, and that the same constitutes the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 20th day of May, A. D. 1924.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

(Seal of United States Circuit Court of Appeals, Ninth Circuit.)

[fol. 64] CITATION—In usual form, showing service on Frank S. Grant, R. A. Imlay; omitted in printing

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Endorsed on cover: File No. 30,380. U. S. Circuit Court Appeals, 9th Circuit. Term No. 417. Real Silk Hosiery Mills, Inc., appellant, vs. City of Portland, George L. Baker, mayor; Frank S. Grant, city attorney, et al. Filed May 31, 1924. File No. 30,380.

(3506)